Appl. No. 09/437,833
Amdt. Dated 10/13/2005
Reply to Office action of 07/28/2005

REMARKS/ARGUMENTS

Pending in the current application are claims 1-35 and 44-52. Claims 1, 8, 16, 25, 31, 44 and 49 are currently amended, claims 2, 5-7, 9-15, 18, 20-24, 26-30, 32-35, 45-48, and 50-52 are original, claims 3, 4, 17, and 19 were previously presented, and claims 36-43 and 53-59 were previously cancelled. The applicants have received and reviewed the Official Action mailed by the Office on 07/28/2005, and respond as set forth below.

Rejections

The Examiner has fully considered applicants' arguments regarding claim 1-35 and 44-52 rejected under U.S.C. 103 in the Office Action mailed on 02/08/2005, amendments to claim 1, 8, 16, 25, 31, 44, and 49 have been entered and that the applicants' amendments to claims 1, 8, 16, 25, 31, 44, and 49 necessitate new grounds of rejection and that claims 1-7 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention and claims 1-35, and 44-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castonguay et al. (U.S. Patent #5,911,134) in view of "Security System Minimises Baggage" (hereinafter referred to as "Security").

The Examiner stated, "as currently claimed, the schedule generator of claim 1 is used to provide an incentive to a second worker in exchange for accepting a portion of a first worker's schedule. However, it is unclear as to what entity actually provides the incentive (the first worker, or by the company). Also, it is unclear whether the incentive is implicitly or explicitly provide to the worker. It is also unclear as to how the schedule generator is configured to provide incentives to employees. As per the specification, the schedule generator is configured to employ a plurality of different algorithms and scheduling routines to generate employee schedules, but does not provide any means for providing employee incentives. Therefore, this new function of the schedule generator is directed to new matter."

The Examiner stated, "as currently claimed, the pool of claim 20 comprises "a listing stored on said database of proposed shift changes...". It is unclear as to whether there exists a separate database of proposed shift changes (which would invoke a lack of antecedent basis), or

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if it is a reference to the database established in claim 16, which is used to store employee schedule data. For the purposes of the following art rejection, the Examiner has interpreted the portion of the claim to read "a listing of proposed shift changes stored on said database"."

Remarks

Currently amended claim 1 claims, among other elements, a sheets sub-module configured to provide an incentive to the second one of the workers to accept the portion of the first one of the workers' work schedule.

The Examiner stated that it was unclear as to what entity actually provides the incentive (the first worker, or by the company). Per amended claim 1, a sheets sub-module is configured to provide the incentive. The sheets sub-module also provides an interface for a manager to create, monitor and delete sheets (please see page 20, lines 21-22). Further, if management determines that additional workers are required, then management or any authorized user may create a sheet (please see page 21, lines 4-6). As such, the management and/or any authorized user may provide the incentive.

The Examiner also stated that it was unclear whether the incentive is implicitly or explicitly provide to the worker. The sheets sub-module includes a capability to increase the wage paid during a particular undesirable shift as an incentive to sign-up for or accept a shift on a sheet (please see page 21, lines 20-23). Since the sheets sub-module provides an interface for a manager and/or any authorized user to create sheets, the manager and/or any authorized user can provide the incentive. In such an instance the incentive is explicitly provided. However, the incentive may be implicitly provided as a worker may understand that an incentive will be provided based on certain actions taken by the worker, such as signing-up for an undesirable shift.

The Examiner further stated that it was unclear as to how the schedule generator is configured to provide incentives to employees. Claim 1 has been amended to claim a sheets sub-module that is configured to provide incentives to employees. As such the sheets sub-module, and not the schedule generator, is configured to provide the incentives.

The Examiner also stated it was unclear as to whether there exists a separate database of proposed shift changes or if it is a reference to the database established in claim 16. The Examiner interpreted the portion of the claim to read "a listing of proposed shift changes stored on said database". Applicants agree with Examiner's interpretation.

As per claim 1, Examiner stated, "the combined teachings of Castonguay et al. and Security fail to teach the step of providing an incentive to the second one of the workers to accept the portion of the first one of the workers' work schedule. Neither Castonguay et al. nor Security expressly teaches the use of offering employees an incentive in exchange for accepting a portion of another worker's schedule." Applicants agree with Examiner's statements.

Official Notice was taken that the concept of paying employees premium wages in exchange for working undesirable hours is old and well known in the art. Currently amended claim 1 claims, among other elements, a sheets sub-module configured, via a software configuration (please see page 20, lines 19-21), to provide an incentive to the second one of the workers to accept the portion of the first one of the workers' work schedule. Neither Castonguay et al. nor Security either alone or in combination teach or suggest a software configuration adapted to be utilized by the management and/or any authorized user to provide the incentive. As such, Applicants do not believe Castonguay et al., Security, nor any of the other cited references teach or suggest such a software configuration. Merely stating that Castonguay et al. and Security could have been modified to teach or suggest such a software configuration does not mean they were modified to provide such a software configuration. Therefore, Applicants believe currently amended claim 1 is in condition for allowance and respectfully request it be passed to allowance.

Applicants further believe that a person of ordinary skill in the art would not have been motivated to combine or modify the teachings of Castonguay et al. or Security to use a software configuration to offer employees an incentive in exchange for accepting a portion of another worker's schedule. The Examiner previously stated that the combined teachings of Castonguay et al. and Security failed to teach the step of providing an incentive to a second worker to accept a portion of a first workers' work schedule. Applicants therefore believe the Examiner would agree that the combined teachings of Castonguay et al. and Security failed to teach the step of

providing an incentive, via a software configuration, to a second worker to accept a portion of a first workers' work schedule. As such, Applicants believe the Examiner has not established a *prima facie* case of obviousness with respect to currently amended claims 8, 16, 25, 31, 44, and 49.

Examiner stated it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Castonguay et al. and Security. Applicants believe that although references can be combined or modified, such a combination or modification does not render the proposed combination obvious, unless the prior art also suggests the desirability of the combination (MPEP 2143.01). A reasonable expectation of success of the proposed combination or modification is also required (MPEP 2143.02). The motivation to combine references cannot be performed by utilizing impermissible hindsight as the motivation to combine the references.

Since dependent claims 2-7 depend on currently amended claim 1 which Applicants believe is in condition for allowance, Applicants believe claims 2-7 are also in condition for allowance and respectfully request they be passed to allowance.
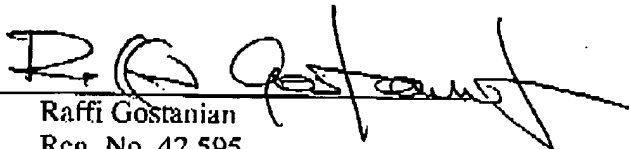
Independent claims 8, 16, 25, 31, 44, and 49 are currently amended to include, among other elements, the limitation of a software configuration. As such Applicants believe currently amended independent claims 8, 16, 25, 31, 44 and 49 are in condition for allowance and respectfully request they be passed to allowance. Since claims 9-15 depend on claim 8, since claims 17-24 depend on claim 16, since claims 26-30 depend on claim 25, since claims 32-35 depend on claim 31, since claims 45-48 depend on claim 44 and since claims 50-52 depend on claim 49, Applicants believe these dependent claims are in condition for allowance and respectfully request they be passed to allowance.

Favorable action on this response is requested at the earliest convenience of the Office. The Examiner is welcome to contact the undersigned at any time.

Respectfully submitted,
WEST CORPORATION

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